

tribes, including the proposed interim surplus criteria. Once again, we ask the DOI to honor its trust duty to protect our water rights by promptly quantifying our water rights in consultation with us. We understand that DOI intends to adopt interim surplus criteria by the end of this year, despite our objection to adoption of criteria prior to quantification of our water rights. Therefore, we demand that DOI immediately commence quantification of our water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria. We also urge the DOI to take various other steps to address the violations of the trust duty, NEPA, NHPA and the Executive Orders discussed in these comments. These requests are summarized in the final section of these comments.

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**Overview of the Hualapai Tribe and the Hualapai Reservation.**

The Hualapai Tribe is a federally recognized Indian Tribe. **The Hualapai once inhabited seven million acres in and around the Grand Canyon and the Colorado River.** The Hualapai Indian Reservation was established in 1883 on a portion of the Tribe's ancestral lands. The main land base of the Reservation, located in northwestern Arizona, encompasses approximately one million acres of land and extends for 108 Colorado River miles, from about River Mile 165 to about River Mile 273.

**The Colorado River is central to Hualapai history, culture, sustenance and survival. The Hualapai traditionally cultivated along the Colorado River banks, in the side canyons and on the plateau. Hualapais also crossed the Colorado River at strategic locations in order to trade and visit with their relatives, the Pai Pais. Traditional ceremonial sites on the Colorado River have continued in use to the present day. The Hualapai have engaged in ranching over vast areas of the Reservation since the early part of the 20<sup>th</sup> Century. The Hualapai, who are known as "the People of the Tall Pines," traditionally harvested timber. Timber harvesting is a significant component of the Reservation economic base today.**

The Hualapai Tribe's current economic development efforts focus on tourism. **The Tribe has designated about 9,000 acres in the northwest corner of the Reservation with unsurpassed views of the Grand Canyon and the Colorado River for tourism development. This area, known as Grand Canyon West, receives nearly 100,000 daytime visitors annually. In addition, Hualapai River Runners guides dozens of tourists on white water and float trips every day of the rafting season. These business ventures provide an important source of Tribal government revenues and Reservation employment.**

The Hualapai Tribe has an enrolled membership of about 2,200 persons. Approximately 1,800 persons reside on the Hualapai Reservation, including about 1,000 enrolled tribal members. Poverty and unemployment are epidemic on the Reservation. Over 56% of Indian residents were below the poverty level in the 1990 Census, and over 80% were below the U.S. Department of Housing and Urban Development's Very Low Income Standard in 1991. The Reservation unemployment rate is quite high: 56% according to 1995 BIA Labor Force data and up to 70% seasonally according to the Hualapai Tribe's most recent data.

**The Hualapai Tribe Has Aboriginal and Federal Reserved Water Rights in the Colorado River.**

**There can be no question that the Hualapai Tribe has aboriginal water rights in the Colorado River. These rights arise from the Tribe's habitation and cultivation of the lands, and associated water uses, in and around the Grand Canyon since time immemorial. In addition to these aboriginal rights, the Hualapai Tribe possesses federal reserved water rights in accordance with the establishment of the Hualapai Reservation.**

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The Hualapai Tribe's water rights have not been quantified because the United States has failed to pursue quantification, notwithstanding the repeated requests of the Tribe and the federal government's trust duty to protect those rights. In the Arizona v. California adjudication, the United States purported to represent the Tribe yet failed to pursue quantification of the Tribe's water rights. Tribal water rights above Lake Mead – including the rights of the Hualapai Tribe, the Navajo Nation and the Havasupai Tribe – were not quantified in Arizona v. California. See 376 U.S. 340, 353 (1964). While the decree in that case did not quantify these tribal rights, it also did not affect any Indian aboriginal or federal reserved water rights above Lake Mead. See id.

The fact that the Hualapai Tribe's federal reserved water rights are not quantified and are not presently fully used by the Tribe does not change their status as federal reserved water rights. Indian federal reserved water rights need not have identified, immediate uses to justify a duty of protection by the United States government. See Winters v. United States, 207 U.S. 564 (1908). Pursuant to the “Winters Doctrine,” Indian federal reserved water rights are property rights which are intended to meet the present and future needs of Indian tribes and which vest no later than the establishment of the reservation, regardless of whether those rights have been adjudicated or otherwise formally permitted. See Arizona v. California, 373 U.S. 546, 598-600 (1963). In addition, Indian federal reserved water rights do not depend upon beneficial use for their initial or continued existence. See, e.g., Cappaert v. United States, 426 U.S. 128, 143-145 (1976).

The DOI has a Trust Duty to the Hualapai Tribe to Protect the Tribe's Indian Trust Assets, and must Explicitly Address the Proposed Action's Impacts on the Tribe's Trust Assets and Fully Mitigate or Avoid Those Impacts.

The federal government in its dealings with Indian Tribes is charged with “moral obligations of the highest responsibility and trust” and should be “judged by the most exacting fiduciary standard.” Seminole Nation v. United States, 316 U.S. 286, 296 (1942). The DOI has adopted policies and procedures to ensure that its actions comply with the trust responsibility. DOI policy requires DOI to protect trust resources and conduct government-to-government consultation with tribes:

It is the policy of the Department of Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety.

512 DM 2.2 (Dec. 1995). See also Secretarial Order 3215, April 28, 2000.

Reclamation's own Indian Trust Asset Policy states that the “trust responsibility requires that all Federal agencies, including Reclamation, take all actions reasonably necessary to protect trust assets.” See Bureau of Reclamation, Indian Trust Asset Policy (Aug. 31, 1994)